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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,084	03/16/2001	Mark Nelson	NLN 301	7370

7590 04/14/2003
Robert D. Varitz P.C.
2007 S.E. Grant Street
Portland, OR 97214

EXAMINER

JAGAN, MIRELLYS

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 04/14/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/810,084

Applicant(s)

NELSON ET AL.

Examiner

Mirellys Jagan

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-6, 12, and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4-6, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,894,677 to Hoffman in view of U.S. Patent 1,102,436 to Richardson.

Hoffman discloses a detachable workpiece surface-gripping device having a snap-fit mounting structure (slot 758) forming a channel for receiving and generally locking an L-shaped projection (base 752) that is at a measuring tape outer end (reference end 746c). The device comprises a gripper body (extension 756) having a generally planar and circular body expanse in the form generally of a closed plane. The device is mounted to the tape's outer end such that the gripper body is located in a circum-surrounding fashion relative to the tape's nominal plane.

Hoffman discloses that the gripper body extends traverse to the lengthwise edge of the tape in order to facilitate orienting the tape and reading the tape indicia when measuring. The gripper body may also be of different shapes (see figures 10 and 11, and column 6, lines 20-34).

Hoffman does not disclose the gripper body having a perimeter structure formed of a row of plural, spaced, perimeter-distributed, workpiece surface-gripping tooth-like projection elements, the elements projecting from the plane of the body toward the direction of a joined tape and adapted for contacting and gripping the far surface of a workpiece.

Richardson discloses a workpiece surface-gripping device (arm 15) joinable to a measuring tape outer end, the device having a structure formed of a row of plural spaced workpiece surface-gripping tooth-like projection elements (teeth 17) located along the gripping device, the elements projecting from the body toward the direction of a joined tape and adapted for contacting and gripping the far surface of a workpiece. Richardson teaches that it is beneficial to place a row of tooth-like projection elements along the workpiece-contacting surface of a measuring tape gripper body in order to firmly grip an article to be measured to facilitate taking measurements.

Referring to claims 1, 12, and 13, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the gripper body disclosed by Hoffman by adding teeth, as taught by Richardson, along the surface (plane) of the gripper body facing toward the direction of a joined tape in order to grip a workpiece surface more securely while taking measurements.

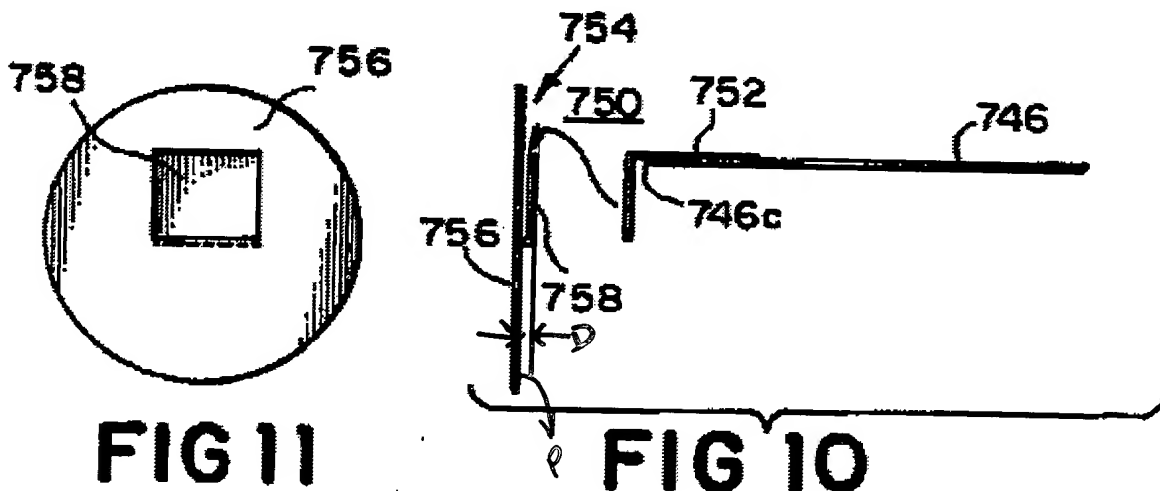
Furthermore, the locations of the row of tooth-like projection elements claimed by applicant, i.e., perimeter-distributed, absent any criticality, is also considered to be nothing more than a design choice since the particular location claimed by applicant is nothing more than one of numerous locations circumsurrounding the tape's nominal plane that a person of ordinary skill in the art at the time the invention was made would have been able to provide in order to securely grip a workpiece surface while taking measurements, as already suggested by Hoffman and Richardson.

Response to Arguments

3. Applicant's arguments filed 2/19/03 have been fully considered but they are not

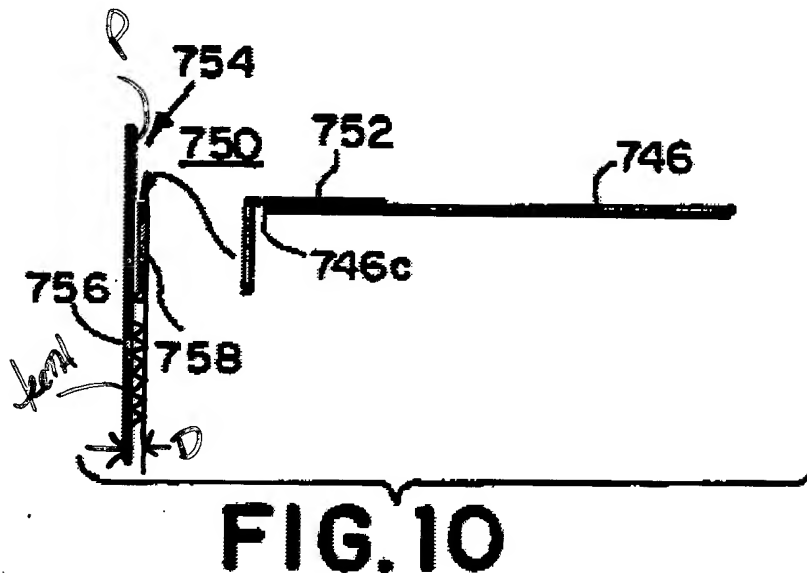
persuasive.

Applicant's arguments that the Hoffman reference teaches a device that includes a planar tab that is affixed "exactly" to the tape outer end such that the plane of the tab that faces toward the tape is aligned at the outer end of the tape, that Hoffman positions the tab "precisely" at the tape outer end, and that Hoffman "clearly" intends his invention to cover tabs that are affixed "exactly" at the free end of a tape blade, see pages 2-4 of the response, are not persuasive since Hoffman does not state anywhere in the reference that the plane of the tab that faces the tape must lie "exactly" or "precisely" at the outer end of the tape, and since the figures which applicant relies upon (figures 7-9) were not used by the examiner to reject the claims. Hoffman does not teach that the plane of the tab that faces the tape must lie "exactly" or "precisely" at the outer end of the tape. This can be seen from the embodiment shown in figures 10 and 11, which was used by the examiner in the rejections (see below), where it shows that the plane (P) of the tab portion that faces the tape measure does not lie aligned with the outer end (746c) of the tape, but instead lies a distance "D" from the outer end (746c) of the tape when the tab is attached to the L-shaped member:



Furthermore, Applicant's arguments that regarding Hoffman's statements in column 2, lines 26-28, see page 3, are not persuasive since this excerpt of Hoffman refers to an embodiment shown in figure 3, which is a rule that does not utilize a tab at the outer end of the rule and was not used by the examiner to reject the claims.

Applicant further argues that, in claim 1 (column 8, lines 38-39), Hoffman 'warns' against tab extensions in any direction (including a direction toward the tape) because of Hoffman's teaching that the planar tab is affixed "exactly" and "precisely" at the outer end of the tape is not persuasive. Applicant argues that placing teeth on the planar surface of the tab that faces toward the tape will destroy the Hoffman reference because it will prevent the planar surface (P) from lying "exactly" and "precisely" at the outer end of the tape, as taught by Hoffman. These arguments are not persuasive for the reason stated above by the examiner: that Hoffman does not teach that the plane of the tab that faces the tape must lie "exactly" or "precisely" at the outer end of the tape. Furthermore, even if Hoffman 'intended' that the tape must lie "exactly" or "precisely" at the outer end of the tape, as asserted by applicant, then the addition of a protrusion such as teeth to the plane of the tab in a direction facing the tape will be necessary to overcome the distance "D", thereby creating a plane that lies "exactly" or "precisely" at the outer end (746c) of the tape (see below). Therefore, applicant's arguments that placing teeth on the plane of the tab in a direction facing toward the tape will destroy the Hoffman reference are not persuasive.



Conclusion

4. The following patent and publication disclose an attachment for a measuring tape:

U.S. Patent 5,291,664 to Pinney, Jr. et al

U.S. Patent Application Publication 2002/0184783 to Poineau et al

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 703-305-0930. The examiner can normally be reached on Monday-Thursday from 8AM to 4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 703-308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7725 for regular communications and 703-308-7725 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

mj
April 7, 2003



Diego Gutierrez
Supervisory Patent Examiner
Technology Center 2800